

USCG-DEPARTMENT OF JUSTICE MOU

MEMORANDUM OF UNDERSTANDING BETWEEN THE DEPARTMENTS OF JUSTICE AND TRANSPORTATION (COAST GUARD) RELATING TO THE INVESTIGATIONS AND PROSECUTION OF CRIMES OVER WHICH THE TWO DEPARTMENTS HAVE CONCURRENT JURISDICTION.

Whereas, certain crimes committed by Coast Guard personnel subject to the Uniform Code of Military Justice may be prosecuted by Coast Guard tribunals under the Code or by civilian authorities in the Federal Courts; and

Whereas, it is recognized that although the administration and discipline of the Coast Guard requires that certain types of crimes committed by its personnel be investigated by that service and prosecuted before Coast Guard military tribunals other types of crimes committed by such military personnel should be investigated by civil authorities and prosecuted before civil tribunals; and

Whereas, it is recognized that it is not feasible to impose inflexible rules to determine the respective responsibility of the civilian and Coast Guard military authorities as to each crime over which they may have concurrent jurisdiction and that informal arrangements and agreements may be necessary with respect to specific crimes or investigations; and

Whereas, agreement between the Department of Justice and the Department of Transportation (Coast Guard) as to the general areas in which they will investigate and prosecute crimes to which both civil and military jurisdiction attach will, nevertheless, tend to make the investigation and prosecution of crimes more expeditious and efficient and give appropriate effect to the policies of civil government and the requirements of the United States Coast Guard;

It is hereby agreed and understood between the Department of Justice and the Department of Transportation (Coast Guard) as follows:

1. Crimes committed on military installations (including aircraft and vessels). Except as hereinafter indicated, all crimes committed on a military installation by Coast Guard personnel subject to the Uniform Code of Military Justice shall be investigated and prosecuted by the Coast Guard if the Coast Guard makes a determination that there is a reasonable likelihood that only Coast Guard personnel subject to the Uniform Code of Military Justice are involved in such crimes as principles or accessories, and except in extraordinary cases, that there is no victim other than persons who are subject to the Uniform Code of Military Justice or who are bonafide dependents or members of a household of military or civilian personnel residing on the installation. Unless such a determination is made, the Coast Guard shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation if such crime is within the investigative authority of the Federal Bureau of Investigation. The Federal Bureau of Investigation shall investigate any serious crime of which it has been so advised for the purpose of prosecution in the civil courts unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by the Coast Guard. Even if the determination provided for in the first sentence of this paragraph is made by the Coast Guard, it shall promptly advise the Federal Bureau of Investigation of any crime committed on a military installation in which there is a victim who is not subject to the Uniform Code of Military Justice or a bona fide dependent or member of the household of military or civilian personnel residing on the installation and that the Coast Guard is investigating the crime because it has been determined to be extraordinary. The Coast Guard shall promptly advise the Federal Bureau of Investigation whenever the crime, except in minor offenses, involves fraud against the government, misappropriation, robbery, or theft of government property or funds, or is of a similar nature. All such crimes shall be investigated by the Coast Guard unless it receives prompt advise that the Department of Justice has determined that the crime should be investigated by the Federal Bureau of Investigation and that the Federal Bureau of Investigation will undertake the investigation for the purpose of prosecution in the civil courts.

2. Crimes committed outside of military installations. Except as hereinafter indicated, all crimes committed outside of military installations, which fall within the investigative jurisdiction of the Federal Bureau of Investigation and in which there is involved as a suspect an individual subject to the Uniform Code of Military Justice, shall be investigated by the Federal Bureau of Investigation for the purpose of prosecution in

civil courts, unless the Department of Justice determines that investigation and prosecution may be conducted more efficiently and expeditiously by other authorities. All such crimes which come first to the attention of Coast Guard authorities shall be referred promptly by them to the Federal Bureau of Investigation, unless relieved of this requirement by the Federal Bureau of Investigation as to particular types or classes of crime. However, whenever Coast Guard military personnel are engaged in scheduled military activities outside of military installations such as organized maneuvers or organized movement, the provisions of paragraph 1 above shall apply, unless persons not subject to the Uniform Code of Military Justice are involved as principals, accessories or victims.

If, however, there is involved as a suspect or as an accused in any crime committed outside of a military installation and falling within the investigative authority of the Federal Bureau of Investigation, an individual who is subject to the Uniform Code of Military Justice and if the Coast Guard authorities believe that the crime involves special factors relating to the administration and discipline of the Coast Guard which would justify investigation by them for the purpose of prosecution before a Coast Guard military tribunal, they shall promptly advise the Federal Bureau of Investigation of the crime and indicate their views on the matter. Investigation of such a crime may be undertaken by the Coast Guard military authorities if the Department of Justice agrees.

3. Transfer of investigative authority. An investigative body of the Coast Guard which has initiated an investigation pursuant to paragraphs 1 and 2 hereof, shall have exclusive investigative authority and may proceed therewith to prosecution. If, however, any Coast Guard investigative body comes to the view that effectuation of those paragraphs requires the transfer of investigative authority over a crime, investigation of which has already been initiated by that or by any other investigative body, it shall promptly advise the other interested investigative body of its views. By agreement between the Departments of Justice and Transportation (Coast Guard), investigative authority may then be transferred.

4. Administrative action. Exercise of exclusive investigative authority by the Federal Bureau of Investigation pursuant to this agreement shall not preclude Coast Guard military authorities from making inquiries for the purpose of administrative action related to the crime being investigated. The Federal Bureau of Investigation will make the results of its

investigations available to Coast Guard military authorities for use in connection with such action.

Whenever possible, decisions with respect to the application in particular cases of the provisions of this Memorandum of Understanding will be made at the local level, that is, between the Special Agent in Charge of the local office of the Federal Bureau of Investigation and the local Coast Guard military commander.

5. Surrender of suspects. To the extent of the legal authority conferred upon them, the Department of Justice and Coast Guard military authorities will each deliver to the other promptly suspects and accused individuals if authority to investigate the crimes in which such accused individuals and suspects are involved is lodged in the other by paragraphs 1 and 2 hereof.

Nothing in this memorandum shall prevent the Coast Guard from prompt arrest and detention of any person subject to the Uniform Code of Military Justice whenever there is knowledge or reasonable basis to believe that such a person has committed an offense in violation of such code and detaining such person until he is delivered to the Federal Bureau of Investigation if such action is required pursuant to this memorandum.

APPROVED:

/s/ Ramsey Clark
Ramsey Clark
Attorney General

/s/ Alan S. Boyd
Alan S. Boyd
Secretary of Transportation

Date: 9 October 1967

Date: 24 October 1967

USCG-U.S. NAVY MOU

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MAY 23 1995

From: Commandant
To: DistributionSubj: COAST GUARD/NAVY MEMORANDUM OF UNDERSTANDING (MOU)
REGARDING MUTUAL SUPPORT IN MILITARY JUSTICE MATTERS

1. Enclosure (1) is a copy of the subject MOU, which was negotiated in anticipation of reorganizations within each service and, specifically, the closure of the Navy Legal Services Office at Naval Station Treasure Island, CA.

2. The Navy Office of the Judge Advocate General will be promulgating policy guidance concerning the MOU to its field units. As this guidance is disseminated, local Navy legal office commanders may contact local Coast Guard commands to discuss details of the MOU.

3. Further Coast Guard policy guidance will be forthcoming as streamlining is implemented in the Coast Guard and the closure of Naval Station Treasure Island approaches.

A handwritten signature in dark ink, appearing to read "F. P. Hopkins".
F. P. HOPKINS
By direction

Encl: (1) CG/USN MOU regarding military justice

Dist: MLCP(1), MLCA(1), CEGD5(d1)

MEMORANDUM OF UNDERSTANDING
BETWEEN THE
CHIEF COUNSEL, UNITED STATES COAST GUARD
AND THE
JUDGE ADVOCATE GENERAL, UNITED STATES NAVY
REGARDING MUTUAL SUPPORT IN MILITARY JUSTICE MATTERS

A. SCOPE, PURPOSE AND AUTHORITY

This Memorandum of Understanding (MOU) outlines an agreement between the Chief Counsel, United States Coast Guard, for the United States Coast Guard and The Judge Advocate General, United States Navy, for the United States Navy with regard to mutual support in military justice matters.

The purpose of this MOU is to advance professional expertise in the practice of military law incident to the prosecution and defense of courts-martial and the representation of personnel at administrative discharge boards, and to further overall military readiness by experience gained through cross training of respective service military justice and personnel procedures.

The statutory basis for mutual support between the Coast Guard and the Navy is 14 U.S.C. §§ 141 and 145.

B. POLICY

The Coast Guard will assign a minimum of four military attorneys to one or more Navy Legal Service Offices (NLSOs) or Trial Service Offices (TSOs). In exchange, the Navy will expand the NLSO mission to include the direct provision of defense counsel and counsel for respondents, along with certain incidental military justice support services, to Coast Guard courts-martial, boards of inquiry, and administrative discharge boards.

C. TERMS

1. Personnel Assignment

a. In consultation with the Navy, the Coast Guard will assign a minimum of four officers certified or qualified for immediate certification under 10 U.S.C. § 827(b) to one or more NLSOs or TSOs. Officers so assigned, whether by permanent change of station, temporary additional duty, or special detail orders, will be under the command of the receiving NLSO or TSO Commanding

Officer. The goal is to assign such officers for a period of approximately one year. Coast Guard officers normally will not be assigned to a NLSO or TSO for a period of less than six months.

b. The principal duty for Coast Guard officers assigned to a NLSO or TSO will be duty as trial or defense counsel. Collateral duty assignments will be consistent with those assigned to Navy judge advocates also serving as trial or defense counsel, and should relate directly to military justice advocacy. It is both desired and expected that Coast Guard officers assigned to either a NLSO or TSO will be detailed as either trial or defense counsel before Navy courts-martial.

c. The Navy agrees to assign Coast Guard officers in roughly equal numbers to trial and defense counsel duties to the extent possible. Specific assignments within a NLSO or TSO, however, will be the decision of the receiving NLSO or TSO Commanding Officer. Individual Coast Guard officers normally will not be detailed to both trial and defense duties during an assignment.

d. Assignments of Coast Guard officers will be to locations where a NLSO or TSO is within reasonable commuting distance of a Coast Guard legal office to which Coast Guard officers may be permanently attached. In consultation with the Navy, the Coast Guard will endeavor to assign two officers to NLSOs or TSOs located in the eastern part of the country and two officers to NLSOs or TSOs located in the western part of the country. Actual locations may vary due to anticipated reorganizations within each service or other needs of each service. Projections of specific assignment locations affected by reorganization or other needs of each service will be determined by mutual agreement.

2. Responsibility for Cases

a. Court-Martial Defense. On request, the Navy will assume responsibility for providing defense counsel at courts-martial referred by Coast Guard convening authorities located within each NLSO's geographic area of responsibility. This responsibility applies whether or not the NLSO with geographic responsibility for the case has an assigned Coast Guard officer. If there is a Coast Guard officer performing defense duties at the servicing NLSO, then that officer will be considered for detail as defense counsel to Coast Guard cases. The decision of whether or not a Coast Guard officer will be detailed as a defense counsel to a Coast Guard court-martial, however, is within the sole discretion of the NLSO Commanding Officer. Any detailing decision will be based upon such factors as constraints of case docketing, complexity of the case, and the advancement of the professional growth of assigned Coast Guard

and Navy officers. Defense counsel assigned to Coast Guard courts-martial will be detailed in accordance with applicable Coast Guard procedures and policies.

b. Court-Martial Prosecution

(1) The cognizant Coast Guard Staff Judge Advocate (SJA) will normally detail Coast Guard officers assigned to Coast Guard commands as trial counsel for Coast Guard courts-martial and recorders for Coast Guard boards of inquiry or administrative discharge boards. Nevertheless, any Coast Guard SJA may request that any Commanding Officer of a NLSO or TSO, to which a Coast Guard officer is assigned trial counsel duties pursuant to this MOU, detail a Coast Guard officer to serve as trial counsel for a Coast Guard court-martial or as recorder for a Coast Guard board of inquiry or administrative discharge board. The requesting Coast Guard SJA and the requested NLSO or TSO need not be located within the same geographic area of responsibility.

(2) The decision of whether or not a Coast Guard officer assigned to a NLSO or TSO will be detailed as trial counsel to a Coast Guard court-martial or as recorder for a Coast Guard board of inquiry or administrative discharge board is within the sole discretion of the NLSO or TSO Commanding Officer. Any detailing decision will be based upon such factors as constraints of case docketing, complexity of the case, and the advancement of the professional growth of assigned Coast Guard officers.

(3) While a Coast Guard officer assigned to either a NLSO or TSO as a trial counsel will be primarily employed as a prosecutor of courts-martial, such designation does not preclude the officer from being assigned other duties generally associated with the functions of a trial counsel. Such duties can include, but are not limited to: acting as recorder of an administrative discharge board; acting as recorder in a board of inquiry; or providing advice to a client command. Such duties will be assigned to the Coast Guard officer to the extent the NLSO or TSO Commanding Officer believes it is beneficial to the Coast Guard officer's professional growth.

Article 32 Investigations. The Navy will make defense counsel available upon request by the cognizant Coast Guard commanding authority. While the Coast Guard normally will be responsible for providing all other required personnel and facilities needed for an Article 32 Investigation, Coast Guard convening authorities may request such assistance from the Commanding Officer of the NLSO or TSO with geographic responsibility for the area where the Coast Guard convening authority is located. Requested assistance will be provided as resources permit in the discretion of the NLSO or TSO Commanding

Officer. Requests by the Coast Guard for a Coast Guard officer assigned to a NLSO or TSO to serve as government counsel will be in accordance with paragraph C.2.b above.

d. Miscellaneous Defense Functions

(1) Upon request, the Navy will provide routine defense counsel services to Coast Guard members. Such services include, but are not limited to, the providing of: "Booker" advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the Initial Reviewing Officer hearing under RCM 305; advice to members on preparing Article 138, UCMJ complaints; and advice to or representation of a member concerning involuntary referral to a psychiatric evaluation, to the extent that the Coast Guard member is entitled by law or policy to such advice or representation. The NLSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between a defense counsel and any Coast Guard member referred to the NLSO for advice.

(2) As part of normal defense counsel duties while assigned to a NLSO, a Coast Guard officer may be assigned to provide routine defense counsel services to both Navy and Coast Guard members. Such services may include, but are not limited to, the providing of: "Booker" advice; advice to members charged with offenses to be disposed of by Summary Court-Martial; counsel to members held in pretrial confinement during the Initial Reviewing Officer hearing under RCM 305; advice on preparing Article 138, UCMJ, complaints; and advice to or representation of a member concerning involuntary referral to a psychiatric evaluation, to the extent that the member is entitled by law or policy to such advice or representation. The NLSO Commanding Officer has the discretion to authorize the formation of an attorney/client relationship between the Coast Guard officer defense counsel and any member referred to the NLSO for advice.

e. Administrative Discharge Boards

(1) The Navy will provide counsel for respondents before Coast Guard administrative discharge boards, including boards of inquiry but excluding Commanding Officer/Officer-in-Charge review for cause proceedings. If there is a Coast Guard officer performing defense duties at the servicing NLSO, that officer generally should be assigned as respondent's counsel. The NLSO will detail respondent's counsel upon request by the cognizant Coast Guard convening authority.

(2) Coast Guard officers assigned to a NLSO may be detailed as counsel for Navy respondents before administrative discharge boards, including officer boards of inquiry. Coast

Guard officers under normal circumstances will not be involved in Navy Commanding Officer/Officer-in-Charge relief for cause proceedings.

f. Continuity of Counsel

(1) If a Coast Guard accused in a criminal case disposed of prior to trial requests that the detailed court-martial defense counsel continue that representation during any subsequent administrative proceeding based upon the same or related factual events, the servicing NLSO will attempt to make such counsel available.

(2) Coast Guard officers serving as trial counsel normally will be relieved of their non-Coast Guard cases and any other NLSO or TSO duties at the time scheduled for detachment. Coast Guard officers serving as defense counsel who have been detailed to cases and have established attorney-client relationships will continue to represent those clients after detachment unless released by the accused or by the presiding military judge.

3. **Implementation.** The parties agree to implement expeditiously this MOU within their respective organizations. The Legal Policy and Program Development Division, Office of Chief Counsel, U.S. Coast Guard will coordinate the initial distribution and continued maintenance of the applicable Coast Guard manuals and other directives necessary for the Navy to assume these additional responsibilities. The Coast Guard agrees to take all steps necessary to assign any additional officers necessary to implement fully this agreement as soon as feasible after the agreement is signed.

4. Scope of Responsibility

a. **Courts-Martial.** Investigation, case evaluation, forum selection, and provision of pre-referral advice for Coast Guard courts-martial will continue to be the responsibility of the cognizant Coast Guard command.

b. **Authority Over Cases/Counsel.** Defense services for Coast Guard cases will be afforded the same priority in docketing and processing as other cases handled by the NLSO.

c. **Individual Military Counsel.** If a Coast Guard officer assigned to a NLSO or TSO is requested as individual military counsel in any case, the NLSO or TSO Commanding Officer will be considered to be the commanding officer for purposes of determining that counsel's availability. For Coast Guard convened courts-martial or Article 32 investigations, determinations of availability, and appeals therefrom, will be made in accordance with paragraph 3-C-3 of the Military Justice

Manual, COMDTINST M5810.1C. However, in a Coast Guard convened court-martial or Article 32 investigation in which a Navy judge advocate has been requested as individual military counsel, determination of counsel's availability, and appeals therefrom, will be made by the Navy in accordance with the provisions set forth in the Manual of the Judge Advocate General (JAGMAN).

d. Extraordinary Assignments. In extraordinary circumstances, the Commanding Officer of a NLSO or TSO may request that specific Coast Guard officers be made available for detail to a Navy or Marine Corps case.

5. Situs of Proceedings. A court-martial convened by a Coast Guard command generally will be tried in courtrooms provided by the Coast Guard. However, in appropriate cases the Coast Guard may request the use of a courtroom provided by a NLSO or TSO. Conversely, in appropriate cases the Navy may request the use of a Coast Guard courtroom for a Navy or Marine Corps case.

6. Rules of Court. A court-martial convened by a Coast Guard command will be tried in accordance with the Coast Guard Court Rules of Practice and Procedure for General and Special Courts-Martial, enclosure (18) to the Military Justice Manual, COMDTINST M5810.1C, even if the presiding military judge is provided by the Navy.

7. Military Judges. The Coast Guard normally will provide the military judge for all Coast Guard cases. Occasionally, however, circumstances may require the assignment of specific cases to Navy-Marine Corps Trial Judiciary judges. Detailing of Navy-Marine Corps Trial Judiciary judges to Coast Guard cases or Coast Guard Judges to Navy or Marine Corps cases will be coordinated between the Chief Judge of the Navy-Marine Corps Trial Judiciary and the Chief Trial Judge of the Coast Guard.

8. Court Members. Court-martial members for courts convened by Coast Guard convening authorities will be provided by those authorities.

9. Court Reporting. The Coast Guard will normally provide court reporting services for all Coast Guard cases. In the event of unusual court-reporting backlogs, either party, through its local POC, may request the other to provide court reporting support on a short-term basis. In addition, in order to maintain court reporting proficiency, the Coast Guard may request temporary assignment of a Coast Guard yeoman to NLSO or TSO court reporting duties.

10. Travel/Funding. The Coast Guard will be responsible for funding travel of military judges, accused, counsel, witnesses, court reporters, members, bailiffs, escorts and other necessary

court personnel incident to Coast Guard convened courts-martial, as well as respondents, counsel for the respondents, witnesses and Board members in Coast Guard administrative separation cases, including boards of inquiry.

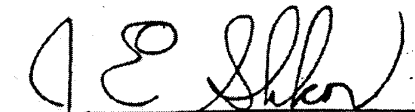
11. Training. Coast Guard officers assigned to NLSOs or TSOs will be permitted to participate in all training evolutions open to Navy officers at the NLSO or TSO, whether on or off site. To the extent providing training opportunities to assigned Coast Guard officers involves travel, per diem and/or tuition expenditures, the Coast Guard agrees to fund all such costs for these officers. Coast Guard funding must be approved in advance for any training proposed to be funded by the Coast Guard. Requests for funding shall be made to the Coast Guard Legal Office to which the officer is assigned permanently or the Chief, Legal Policy and Program Development Division, Office of Chief Counsel, USCG Headquarters. In addition, the Navy may fund such training at its option.

12. Officer Evaluation Reports. Commanding Officers of NLSOs or TSOs with assigned Coast Guard personnel will designate supervisors, who will prepare Officer Evaluation Reports for those Coast Guard officers under their supervision. The NLSO or TSO Commanding Officer shall act as the Reporting Officer. The Reviewing Officer for such reports shall be the Chief of the Coast Guard Legal Office to which the Reported On Officer is permanently assigned. Assigned Coast Guard officers will provide all necessary guidance and advice regarding the initial preparation of such reports to the cognizant command.

13. Local Liaison. Subject to the terms of this agreement and any implementing guidance issued by higher authority, direct liaison between the NLSOs or TSOs and Coast Guard Legal Offices is authorized and encouraged. Nothing in this agreement shall be construed to prevent the local assignment of additional Coast Guard attorneys to a nearby NLSO or TSO for shorter periods of time than six months for training and litigation experience under such terms as may be mutually agreeable between the Chief of the Coast Guard Legal Office and the Commanding Officer of the NLSO or TSO.

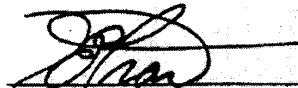
14. Review/Modification. This MOU will be reviewed annually to ensure it continues to meet the needs of both the Coast Guard and the Navy. Anticipated reorganizations in the near future in both the Coast Guard and the Navy may precipitate more frequent review. In the event that the number of Coast Guard court-martial cases or administrative discharge boards, including boards of inquiry, materially increases in either quantity or complexity over that generally experienced during the three years immediately preceding the effective date of this MOU, the Navy reserves the right to request additional officers qualified to serve as described herein.

15. Effective Date/Termination. This MOU is effective upon signature of both parties. The MOU will be extended automatically absent a written indication from either party of a desire to terminate. Either party may terminate this MOU at any time by written notice of termination to the other party. Such termination will be effective six months from the date of written notification. In the event of termination, all existing counsel assignments will be carried through to completion by assigned counsel.



J. E. Shkor
Rear Admiral
U. S. Coast Guard
Chief Counsel

Date: 24 APR 1995



H. E. Grant
Rear Admiral
U. S. Navy
Judge Advocate General

Date: MAY 03 1995

